

## Coast Guard, DOT

## § 20.403

(c) Default by respondent constitutes, for purposes of the pending action only, an admission of all facts alleged in the complaint and a waiver of respondent's right to a hearing on such factual allegations.

(d) Upon finding that a default has occurred, the Administrative Law Judge shall issue a decision against the defaulting party.

(e) For good cause shown, the Administrative Law Judge may set aside a finding of a default.

(1) Failure of another party to comply with the requirements of this part or with any order of the Administrative Law Judge;

(2) Failure to prosecute the civil penalty proceeding; or

(3) Failure to show a right to relief based upon the facts or law.

(e) A dismissal is the decision of the Administrative Law Judge.

[CGD 91-228, 59 FR 15022, Mar. 30, 1994; 59 FR 45757, Sept. 2, 1994]

### § 20.311 Withdrawal or dismissal.

(a) A class II civil penalty proceeding may be withdrawn without any action by an Administrative Law Judge in the following manner:

(1) By the filing of a stipulation by all parties who have appeared in the class II civil penalty proceeding;

(2) By the filing of a notice of withdrawal by the Coast Guard Representative at any time before the respondent has served a responsive pleading; or

(3) With respect to a complaint filed under section 311(b)(6) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)(6)), by the filing of a notice of withdrawal by the Coast Guard Representative at any time after the respondent has served a responsive pleading and prior to the issuance of an order of the Commandant assessing or denying a class II civil penalty, together with a certification by the Representative that the withdrawal is made in response to a request by the Attorney General that the Coast Guard refrain from administrative action, as provided in section 10(d) of Executive Order 12777 (56 FR 54757, 3 CFR 1991 Comp., p. 351).

(b) Unless otherwise stated in the stipulation or notice of withdrawal, a withdrawal under paragraph (a) of this section is without prejudice.

(c) Except as provided in paragraph (a) of this section, a class II civil penalty proceeding may not be withdrawn except by an Administrative Law Judge upon such terms and conditions as the Administrative Law Judge deems proper.

(d) Any party may move to dismiss the complaint, including a request for relief, for—

## Subpart D—Proceedings

### § 20.401 Initiation of class II civil penalty proceedings.

A class II civil penalty proceeding is initiated when the complaint is filed with the Hearing Docket Clerk and served on the respondent.

### § 20.402 Public notice.

Upon the filing of a complaint, the Coast Guard provides notice of the proposed issuance of an order assessing a class II civil penalty which is responsive to the complaint. The notice will be published in the FEDERAL REGISTER.

### § 20.403 Consolidation or severance of class II civil penalty proceedings.

(a) An Administrative Law Judge may for good cause, with the approval of the Chief Administrative Law Judge and with notice and opportunity to object provided to all parties, consolidate any or all matters at issue in two or more class II civil penalty proceedings docketed under this part. Good cause includes cases where there are common parties or questions of fact and where such consolidation would expedite the cases, and the interests of justice would be served. Consolidation will not be granted if it will prejudice any rights available under this part or if it will affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

(b) Unless directed otherwise by the Chief Administrative Law Judge, the presiding Administrative Law Judge may in response to a motion or on his or her own motion, for good cause shown, order any class II civil penalty proceeding severed with respect to some or all parties, claims, and issues.